

COMBATTING ELDER ABUSE: NEXT STEPS FOR CALIFORNIA

**A public hearing conducted by the
ASSEMBLY SELECT COMMITTEE ON ELDER ABUSE
December 5, 2003 – San Jose, California**

Welcome and Introductory Remarks

State Assemblyman Joe Simitian, Chair:

...making sure they get to the Capitol and I'll be stepping out promptly at the end of the hearing at 4:00 p.m. to head directly to the State Capitol. Please be assured, however, that the contents of today's hearing will be conveyed to other members of the committee, as well as their staffs. We will be taping all of today's comments, both by our panelists who've been kind enough to join us, as well as the public comment portion of the presentation, to make sure that other members of the Select Committee on Elder Abuse are aware of the information we acquire today.

My thanks, before we get started, to all of the people who were kind enough to help us get today's events pulled together. Some of you are aware that we had help from the Santa Clara County Senior Commission here, but also from the City of San José Senior Commission helped us provide notice as well. San Mateo County Commission, we will be meeting with on the 16th in a somewhat different format, a little more informal, covering a wider range of issues, but we're looking forward to that as well. And there will be another formal committee hearing for the Select Committee on Elder Abuse on December the 10th from 1:00 p.m. to 4:00 p.m. in Santa Cruz County, in the Santa Cruz City Council Chambers. So we will be, I think, getting good representation and input from Northern California in this round. We are hoping then to, later in the two-year session of the Assembly, have a series of hearings in Southern California, where many of the committee members represent senior constituents. And we're hoping to derive from this process some thoughts about what if anything the State can do to combat elder abuse, both physical abuse and financial abuse.

You all know, I think, that the State is in very difficult times financially, so we are looking for things that cost little if any money. There are such solutions out there, I think, if only we would look for them. And we have talked with our panelists, and I would encourage members of the public who speak later today to be mindful of the fact this is a hearing designed not simply to identify problems, but to identify solutions. So we've asked each of the panelists to not only take a walk through the issue of what are the problems that they see, but what if anything might the State be able to do to help. So it's solution-oriented today, as well as identifying the problems.

That being said, let me ask that we have our panelists all in place, which I believe they are. I'm going to ask, as well, that our staff, both Kristina Loquist who will raise her hand, and Melissa Millsaps who will raise her hand as she walks in the back of the room. Thank you. They will be passing out cards to take your questions, or excuse me, to take your requests for comments. If you are a member of the public and would like to comment, when that time comes, simply fill out a card, we will bring them up front, and I will then call on folks as the opportunity presents itself. I see a couple hands up already. Please feel free during the course of discussion today to simply raise your hand again, and we'll make sure you get a card. Once you've filled it, as I say, we'll put it in a pile and we'll call you up as soon as you know what the possibilities are. For those of you who are feeling a little bit remote in the back, please feel free to come forward. I promise you won't be called on, you're not in class, so you need not feel reticent about that at all. And what I'm going to do now is, as we're passing out cards, I'm going to ask the panelists to provide opening remarks to inform me, my fellow committee members and members of the public who might be here, again starting with a problem statement and offering some solutions. I'd also like you, before you offer your comments, to identify yourself briefly both for the record and as well as for members of the public, and to give a brief description of your role and responsibilities, so we understand the basis for your comments. Thank you again for being here.

I'm going to ask that we begin with Lisa Mancini who will be followed by Jamie Buckmaster, who will be followed by Lori Kratzer, who will be followed by, I think, Cindy Seeley Hendrickson, who will be followed by Helen Karr. So if you go in that order, I think that will help sequence things a little bit. We will also let you know when your time is coming. So let's begin with Lisa Mancini. If you would introduce yourself for the record, tell us a little bit about you and identify problems and solutions in the area of financial abuse, which is the first part of the panel. We will then return to physical abuse after we have dealt with these financial abuse issues. Thank you.

Financial Abuse Panel: Problems and Solutions

Lisa Mancini:

Thank you very much, and thank you for asking me to be here today. My name is Lisa Mancini. I'm the Director of Aging and Adult Services in San Mateo County, which is a division of the Health Services Agency. Under Aging and Adult Services, we house a very large continuum of care for seniors and disabled adults. One of those areas is in protective services, our Adult Protective Services, as well as our Public Guardian, as well as in-home support services and many other case management programs.

All of the services work very closely when we pull together any sort of abuse case that comes into our county. We have established for many years what we call our TIES Line. It's a 24-hour emergency response line. It's Teamwork Insuring Elder Support. From that we've been able to get on a 24-hour level, the number of reports on the different forms of abuse. We're speaking here about financial abuse. I think we all agree that there are many other abuses. We

never just really see a case that is solely hit with financial abuse, there's usually some other form, psychological, physical, other abuses that are involved in that area.

A problem that we have seen over the last eight years [in San Mateo County], there has been a 300% increase in financial abuse reports. Our numbers are a little bit smaller than what Santa Clara County sees, but I think percentages are what tell the story. Of the percentage of the abuse reports that we get, 42% are financial abuse, those that are perpetrated by others. Of those that we received in the calendar year of 2002, 36% were confirmed, and 39% were inconclusive, while the others were unfounded.

An example of a case that we currently have with our district attorney right now waiting for prosecution, and just to give an idea what we're seeing more and more, this is such a rapidly growing crime. A client who is in his seventies who has lived with his mother all his life, who took care of him, and when she died, there was no one left to take care of this very large estate in the millions of dollars. This man did not know exactly who to call on. He had a bad relationship with other family members who did want to step in, who lived out of the area. So he had no one there, except for a man who works as a financial advisor and called himself a financial consultant. [He] got into this man's house, was able to have him sign over all of his assets, power of attorney, which was absolutely inappropriate in this man's condition. He's been deemed to be incompetent to give any medical or legal authority.

When we were finally contacted to get involved, along with our local police agency, we found that within a six month period there were checks written out to this financial consultant for over \$600,000. (He) purchased a new car, the financial consultant a new car, and a range of other gifts. At this point, it's in the range of \$2 million that has been taken from this man. He can no longer take care of himself. As a result of our APS involvement and our police investigation, and the meeting with our multi-disciplinary team, we were able to follow through with our district attorney, who has been very fortunate recently that we've been able to take these forward for prosecution.

The difficulty is, at least in San Mateo County, we don't have the ability to have a separate unit in our district attorney's office that can devote full-time to financial abuse. And right now it's becoming overwhelming, and we do need more staff in that area. With the increase in abuse cases, we don't know how we're going to be able to manage that. So those are some of the issues, and as you know, I'm sure we can spend an entire afternoon talking about different case scenarios.

What we have found to help in the solution format is our improved response to reports. The fact that we approach it with a multidisciplinary team, including under one roof we have our Adult Protective Services, our Deputy Public Guardians, our Rep Payee and Public Health Nurses, who are in the same building, who are able to talk about all these cases. What we're trying to do, more and more, is get together these many multidisciplinary teams, so we can get

law enforcement in the moment, or we can get the district attorney's office to be there, to understand. If we can approach this together, it's much quicker and easier to solve it.

The other solution that we feel we can work toward, that requires different levels of funding, is an increase in awareness and prevention. We've established an adult abuse prevention collaborative, where we're focusing primarily on getting the word out to the community, getting the word out to seniors and to adults with disabilities, just what the issue is, what's the problem and the extent of the problem. Through that group, we were trying to be very creative because again we don't have the funds that are out there to do as much community promotion as we would like to do.

One area in our creativeness is we put together a drama troupe that went around and did performances throughout the county. This would be a very different way, a very different approach, of showing scenarios of abuse. But again, that is being very creative, very innovative ways of doing things, and we need to find where the funding is to continue with that.

We continue to provide training to our police and fire departments, our emergency medical services because we know they are the ones, they're our eyes out in the community. So are our in-home support services providers on their end, 2,800 in San Mateo County and 2,800 homes, they're the ones who are right there every single day. They can see what's going on. That's—we're hoping for the future, again, through expanded training opportunities for education, to be able to improve that. San Mateo County just passed Assembly Bill 786 to allow us to be a pilot project for uniform assessment. What we're hoping is, if we're able to do this across the county, everybody's going to be assessed to the point where all staff, not just within the Adult Protective Services, but with our whole senior care system, will know what to look for, the signs of abuse. And then, where to go with that.

State Assemblyman Joe Simitian, Chair:

Thank you very much.

Lisa Mancini:

You're welcome.

State Assemblyman Joe Simitian, Chair:

Before we move on to our next panelist, let me just ask a clarifying question. You mentioned a 300% increase in reports, I believe it was financial abuse, over an eight year period. Am I correct?

Lisa Mancini:

That's correct.

State Assemblyman Joe Simitian, Chair:

Do you have any way to know whether most of that increase should be attributed to an actual increase in the incidents of financial abuse, or whether we're simply getting more successful at encouraging people to report cases of financial abuse?

Lisa Mancini:

Where we've really seen an increase is from 1999 and to the future. And that is because that's when the mandated law was passed. The Senate bill was passed regulating elder abuse as a law. And from that point is where we've really seen an increase because the word has gotten out. And also, in San Mateo, which I think is the same as Santa Clara County, we may not be cash rich, our elders may not, but they are property rich with the increased value, and sad to say, family members, caregivers are very aware of that. So, we've seen that just recently over the boom in the last five to seven years.

State Assemblyman Joe Simitian, Chair:

Well thank you. I think that's helpful, and frankly, it's, you know, looking for a shred of good news in this conversation. The notion that in fact legislation has made a difference in the incidents of folks coming forward to report the problem when it exists, I think is encouraging, and suggests there are things we can do that will help protect folks in this situation. Thank you again. Let us go now to Jamie Buckmaster, and ask Jamie if you will share your comments with us today, as well as a brief introduction of yourself for the public and for the record. Thank you.

Jamie Buckmaster:

Thank you, Assemblyman, Committee. My name is Jamie Buckmaster. I'm the manager of Adult Protective Services for Santa Clara County. APS is one of the programs in the Department of Aging and Adult Services, which is part of the Social Services Agency. I think everyone on the panel here would say financial abuse is on the rise. Not only in national trends, but it's a trend we've seen in Santa Clara County just like we've seen it in San Mateo County, which is one of our contiguous counties. In this particular county, financial abuse has increased over the last few years, and is now about 35% of all the reports that we take. And in this county, we take, last year 2002—calendar year 2002, we took about 2,100 reports. And so you can see that's an awful lot of financial abuse reports in the county. We are vulnerable. Our elders are vulnerable because of the price of homes here. And there's a vulnerability quotient that goes with that, the aging of the population mixed with the value of the homes here. And homes in this county, like San Mateo County, are the single largest asset that an elder has.

It's commonly said that only 1 in 14 incidents of abuse actually gets reported. With financial abuse, we believe it's more like 1 in 100. Probably because the typical financial abuser of an elder person is their adult children. From 60% to 90% of elders that are abused, it has turned out to be their adult children or some other relative. We do see some caregiver financial abuse, and certainly see many scams out in the community. And, we're concerned about all of it. Not only is it because we want to prevent financial destitution, but the Journal of the American Medical Association study has shown that an elder who faces financial destitution has a three times higher mortality rate than a non-victim.

In terms of solutions in this county, we have for the last almost five years been managing the financial abuse specialist team. We call it FAST. It's a unique multidisciplinary team made of four partners. Those partners are Adult Protective Services, the Public Guardian/Conservators Office, County Counsel, and the District Attorney's office. And in fact, you're going to hear from one of my partners, Cindy Hendrickson, later about the District Attorney's office. These four partners have come together and have developed a rapid response team. We, like San Mateo County, are 24/7, and consider financial abuse emergency response in this county.

One of the—there's many reasons why FAST works. We all know our own roles. APS assures the well being of the client, the District Attorney's Office successfully prosecutes the cases. County counsel not only represents each of the parties in the partnership, but also represents our conservatees in terms of any civil suit. And lastly, our Public Guardian/Conservators Office in California has the ability to use Probate Code Section 2901 to freeze assets immediately if we believe that the team may move for conservatorship on someone who's lost capacity in the next 15 days. I'm proud to say that the FAST team, the rapid response team, has prevented the loss of and recovered as of this week, \$106 million in this county alone.

We've taken this unique partnership and developed other kinds of solutions in the community. Back in December of 2000 we published the law enforcement protocol with the 15 different jurisdictions in this county. Very comprehensive. It's the largest law enforcement protocol in the State of California. And, we're happy to say, the Department of Justice in the State of California will be using that law enforcement protocol as a model for the state. In addition, we recently started the financial institutions team which has basically a sole purpose to train bank and financial institutions staff to spot elder abuse. Because, typically, they know their customers. They're one of the first ones, they're kind of the front line on spotting elder financial abuse.

State Assemblyman Joe Simitian, Chair:

I apologize, I still had my head in your previous comment about the law enforcement protocol, and the name of that process or program is?

Jamie Buckmaster:

The financial institution team?

State Assemblyman Joe Simitian, Chair:

Yes.

Jamie Buckmaster:

Yes, we call it the FIT team. And basically our department is partnered with financial institutions in our community to train their folks to spot financial abuse in its early stages. One of the things I'd like to emphasize, in terms of the solution, is prevention is the key. Once the money starts to move, once the perpetrator has the money, it can be very, very difficult to get that money back again. And that's why we do FAST. We move quickly, we move carefully, and we emphasize prevention. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you. Let me just follow up if I may on the law enforcement protocol. What kinds of issues are covered in the protocol? And how is the world different as a result of the protocol being in place, than it was before the protocols weren't in place?

Jamie Buckmaster:

Well, one of the things the protocol does is look at the nine types of abuse that actually get reported through Adult Protective Services. Law enforcement is compelled to cross-report to us, as we are to cross-report to them. And report to them any suspected criminal activity. Essentially, what it was was a gathering of the minds from the law enforcement perspective, to kind of standardize the way we would approach investigation of elder and dependent adult abuse in this county.

State Assemblyman Joe Simitian, Chair:

And when that standardization occurs, is it your sense that that's valuable because what we've done then is put best practices in place across jurisdictions, or is it helpful because different jurisdictions were able to cooperate more clearly and more effectively because we're all speaking the same language? I mean, what is it you see as the net improvement or value added to the process as a result of the protocol?

Jamie Buckmaster:

The first most important thing, from my point of view, is just the education about elder abuse. There are many folks out there that feel, don't really think elder abuse exists. And we know

we're just at the tip of the iceberg. So, it brings to the attention of law enforcement the subject of elder and independent adult abuse. And it standardizes the investigation of that for each of the jurisdictions and that can be carried over to the prosecution side. So it really is a best practices model, but starting with just the education piece, back in 2000.

State Assemblyman Joe Simitian, Chair:

Thank you. And thank you very much for your remarks.

Jamie Buckmaster:

Thank you.

State Assemblyman Joe Simitian, Chair:

Let me ask now if we could ask Lori Kratzer to introduce herself and share her comments.

Lori Kratzer:

Yes, hi. I'm Detective Lori Kratzer with Palo Alto Police Department. And I do elder abuse investigation among other things. And thank you for inviting me here today to speak on the subject. What I would like to say, to begin with, is I think for law enforcement that we're at the tip of the iceberg. And Jamie was just talking about law enforcement protocol and consistency in investigations. And I think what we're seeing is such a dramatic increase in cases, partly because of education and training of all professionals that deal with elders. But, in part, it's because of training and education for law enforcement. But I think we have a long ways to go. I think the county protocol is an excellent document. But I think a lot of departments are just understaffed and under trained when it comes to elder abuse investigations. Many times there is lack of understanding, I think from law enforcement's point of view, or interest in this area. I kind of relate it to where law enforcement was maybe twenty years ago in relation to child abuse investigation, or domestic violence. And I think it's an awareness level that's really important for first responders to understand—and that includes fire and paramedics—because many times patrol officers and fire department paramedics are the first responders to situations regarding elder abuse.

I can speak for Palo Alto. We've had a dramatic increase in reported cases since 2000. And it's probably in the range that Lisa was speaking of in the 300%. But still, those statistics I think are lower than what's actually out there. I'm not sure if it's so much a matter of these crimes increasing. There's a shift in population because of an aging population. And once again, I think it's education of professionals in the mandates that the state has in place to report these crimes.

Regarding financial abuse, we see cases where elders are basically targeted from every imaginable angle. If it's not a family member, it's going to be a stranger or a caregiver, or it's going to be a telemarketer, it's going to be a lottery scam. It's going to be a sweetheart scam. All these types of crimes are targeting elders from every direction. And, yes, part of it is property values, but a lot of our elders are living off of pensions. I see elders that have been targeted that are homeless, that are getting pensions. They're actually getting targeted with scams through the mail, then sending money off to crooks basically. So, it doesn't seem to stop. And, I think there are solutions that could be put in place.

I think one of the most important things that we've all been talking about is teamwork. And within budget constraints, I could see doing a lot more with what we have without having to spend a lot more money. Part of the thing is, I think it's so vital for law enforcement to be teamed up with Adult Protective Services, Public Guardian. I think it would be ideal to see actual teams in every police department, with a social worker, a public guardian. It would be great to have a medical person on board also to actually go out as a team to assess and use all our resources and authority to approach these cases. Because for law enforcement, I think one of the biggest problems is that cases are so complicated and extremely time consuming, and you need specialized detectives or specialized units to actually approach investigating, especially the financial abuse cases. I think a lot of patrol officers, it's a matter of recognizing the case, getting it initially reported, but I think you also need specialized units to do the investigation.

Another thing I would like to see. Fresno has a forensic elder abuse center where actually law enforcement, APS, I believe public guardian, the DA's offices are all housed in the same building. And I think that would be an ideal approach. It's actually sort of similar to domestic violence where you have a family violence center. You could look at that same sort of concept for elder abuse. And actually bring in law enforcement and other agencies to work together, and have a place for say, in an emergency situation, an elder can be brought to the center. If it was a patrol officer or a paramedic, they could actually bring an elder to that center or come there for advice on a case. So you could get all the professionals working together.

I think another big issue for financial abuse cases, for a solution, would be to get the banks on board for mandatory reporting. In Palo Alto, for example, I have a case where one senior was scammed by a Canadian lottery scam, and went to her bank and wire transferred \$590,000 in one fell swoop to an offshore bank. I think it's awfully important to have the banks report this kind of suspicious activity for a senior to law enforcement immediately, and to stop this kind of abuse, because that amount of money in one case, I think, is not unusual, necessarily, and these go very commonly unreported.

State Assemblyman Joe Simitian, Chair:

Could I ask, could I interrupt for a minute? What is the current reporting obligation of the banks and financial institutions? None?

Lori Kratzer:

None. Absolutely none. I can tell you we get calls from the banks that someone is trying to pass a bad check, but for an elder either being brought into a bank by a crook, sometimes they'll actually escort the elder into a bank. Many scam artists do that. Or an elder, like I just was referring to this case, where she wire transferred \$590,000 of her retirement savings at one time, without the bank manager picking up the phone and calling the police. To at least notify us that there's suspicious activity there with this senior. You know, basically shipping off her entire assets to offshore crooks. I see it over and over, and I think other professionals and the DA also sees this as a large problem. Very difficult to go back and try to stop the money flow after it's gone.

State Assemblyman Joe Simitian, Chair:

One of the challenges of a term limited legislature, of course, is that some of these issues get discussed prior to the arrival of members, and new members arrive. Is this an issue that has been discussed legislatively in the past? I suspect it has. And I'm suspecting as well that part of the resistance was with respect to confidentiality in a financial transaction.

Lori Kratzer:

Uh-huh.

State Assemblyman Joe Simitian, Chair:

Okay, thank you. If there are others who have comments about this particular issue or approach as we go through the conversations today, I would appreciate hearing about it. Detective Kratzer, I did not mean to cut you off, but I wanted to make sure I didn't let that go unexplored. Go ahead.

Lori Kratzer:

Thank you. No, I believe I'm finished. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you. And one other question I had for you is you emphasize the importance of teamwork between and among various departments and agencies. Are there impediments to that kind of teamwork, now, that get in the way? Or is it simply a question of folks taking the initiative to make sure those relationships get established?

Lori Kratzer:

I think it's connected with training issues for police officers to have a broader understanding and an interest in this area. Speaking for myself and for Palo Alto, it's been a great team effort working with Adult Protective Services, with Cindy Hendrickson, our DA, public guardian. But I feel we're sort of different. I don't see a lot of police departments doing that. And I think there should be give and take on both law enforcement and social services, and public guardian, to try to combine our efforts—to physically be in the same room together, so we know each other and we can actually approach these cases together. And it wouldn't cost anything. (It is) just a matter of offering. I think it would social services being able to be housed in police departments, at least some that would specialize on a team like this.

State Assemblyman Joe Simitian, Chair:

All right, thank you very much. Let me ask now that we hear from Cindy Seeley Hendrickson. Welcome and thank you.

Cindy Seeley Hendrickson:

Thank you. I'm Cindy Seeley Hendrickson, and I'm the Deputy District Attorney for the County of Santa Clara. And I've been assigned to the elder fraud unit since 1999. I've identified three problems, three main problems that affect law enforcement. Number one, as other speakers have already touched on, is that we just have more potential victims. You may already be aware of the statistics that by 2020 the number of people 65 and older in California is going to double. But here in Santa Clara County I saw my caseload increase from 1999, a caseload of thirteen, to now 2003, a caseload of over seventy cases. And my partner and I have handled 197 cases in the last four years or so, and that's not including the cases we've investigated that didn't result in prosecution. And, of course, other speakers have touched on the reason for the increase in elder fraud cases: we have more elders, there's increased wealth (among elders). Also, families are more spread out, and isolated people tend to be more likely to be victimized.

The second problem that we have in the area of law enforcement has also been touched on by other speakers and that's the problem of underreporting. Jamie covered the fact that a lot of people perceive this to be a family matter because so many of the perpetrators are family members. There's also the factor of shame and embarrassment that a lot of the victims feel. They don't want anyone to know. And some express the fear that if the kids find out, the kids might try to take away their independence.

There's another phenomenon that causes this underreporting and that is that there's often an element of love, trust, or dependence, or even fear between the victim and the perpetrator. Often because the perpetrator is the caregiver, there's a tremendous concern on the part of the victim. What's going to happen if the perpetrator leaves? Finally, another reason why these cases are so underreported to law enforcement is that, a lot of times, the victims are just

unaware, either because they trust the perpetrator so much, or because they suffer from some sort of mental deficit that just precludes discovery of what's going on.

And the third problem that I've identified that particularly affects law enforcement is the fact that Lori, one of the facts Detective Kratzer touched on, the fact that elder abuse investigations require so many resources. One of the reasons they require so many resources is because in the area of elder abuse, law enforcement has to be a lot more proactive than other areas. For example, in a regular case, an officer will wait for a victim to come and report a case to them. So the investigation begins with some evidence of a crime.

With respect to elder abuse cases, many or most elders are unwilling or unable to report the crime. So, a lot of times, the initial investigation is initiated based on a phone call from a suspicious neighbor who doesn't have any confirmed facts. But we still have to investigate those cases. So, in those cases, we're beginning an investigation based on mere suspicion. But we have to do that because if we sit there and wait for a victim to present a case to us, we're going to miss a lot of righteous cases. So we end up spending a lot of law enforcement resources on cases that don't result in prosecution. Another reason why we have to get involved, why law enforcement needs to get involved, before there's clear evidence of a crime is because we've been, when we do that, we've been tremendously successful in thwarting the crime. When Detective Kratzer shows up at someone's door, that often has more of an effect than if a social worker who doesn't carry...

State Assemblyman Joe Simitian, Chair:

It would have an effect on me, I can assure you, if Detective Kratzer showed up.

Cindy Seeley Hendrickson:

Another reason why law enforcement investigations require so many more resources, again, as Detective Kratzer pointed out, they tend to be so much more in-depth. And, I felt the best way to explain this would be to give you an example of a typical case that we'll see. I had a case recently that I prosecuted that involved a thirty year old man who befriended an eighty year old woman who was suffering from mild dementia, at first. She was isolated, she didn't have any family and she didn't have a good command of the English language. The defendant moved in with the victim. He offered to arrange for the remodel of her home. He took her to shows in San Francisco. He took her out to eat and fed her food that nobody with diabetes should have ever eaten. And he was giving her back rubs. He, the defendant, opened about ten different accounts, some in his name, some in the victim's name, and co-mingled his salary with the victim's money. And he moved money back and forth among the ten different accounts. Two years later, it turned out, the victim's home and her condominium, were both in the defendant's name, and \$474,000 of her assets were unaccounted for.

Initially, the victim, in her statements, indicated she was unaware of any of those transactions, but because she loved, and to this day, loves the defendant so much, she later said “I gave him everything.” So what that case, what the investigation of that case required was an initial interview of the victim to try to get a sense of what was going on, to find out where she kept her money. When we found out where she banked, that maybe was one account, we ended up, my investigator had to do a lot of investigation to track down those ten accounts, had to do search warrants to get ten different bank accounts, separate bank account records. And sometimes you would get bank account records from one account and then you’d see where money went to another one. Very tedious. And then my investigator had to analyze the bank records to figure out how much money was unaccounted for. We also had to obtain real estate documents that showed the transfer of the real property.

There was a neuropsychological exam done of the victim to confirm the mental deficit. Lots of interviews were done, nurses, neighbors, bank personnel, public guardian personnel (this was a FAST case, the public guardian conserved the victim), people who were listed on checks that went out of the victim’s account, anybody who was a witness to the relationship between the victim and the defendant. Because what we’re looking for, and we didn’t have the victim’s assistance in this, is did the victim know about the transfers, did the victim consent to the transfers, and if she appeared to consent, was that really an informed consent? It takes a minimum six months of investigation to complete the investigation on a case like that.

And another reason why elder abuse cases investigations require so many resources, as Detective Kratzer said, law enforcement has to be specially trained. All those items of investigation, that I just mentioned, are not going to immediately come to mind to somebody who’s just rotated into a detective assignment. Also, investigators need to be specially trained. There are certain tools, some thanks very much to the Legislature, that we have available to us. There’s Evidence Section 1380, which became effective in 2000, is tremendously helpful to us. It allows for a videotape statement of the victim to be admissible if the victim either dies or becomes unavailable at the time of trial. And that recently withstood a constitutional challenge just this year.

We had a case recently where the warrant went out in 1999, the investigator had attended training and knew what he was supposed to do. He got a videotape in 2000 and the defendant was finally arrested in 2003. By then the victim had been moved to North Carolina, but the defendant ended up pleading guilty on her first court appearance because the detective from San Mateo, the Sheriff’s Department Detective Mahr, had been on the ball enough to do that videotape. So, but the detectives have to be specially trained to do these things. Also there’s a Penal Code section that allows us to examine the source of bail, so that the defendants don’t use the victim’s [money] to bail out. Now, again these are things that are not just going to occur to any police officer if they haven’t been specifically trained.

These cases, as I’ve already illustrated, it’s very specialized investigation where you’re looking at things beyond what does the victim say, you have to look at all the circumstances. Also, the

FAST team which has been, I think, the lynch pin of our success in Santa Clara County requires staffing. I mean, there has to be investigators who are available to attend the bimonthly meetings, available to respond quickly. So, again, these take resources.

What I would suggest, turning now to the solutions portion, I think as it's already been mentioned by other speakers, of course, education and some of that we're already doing. A lot of that we're already doing. Education of the public, to groups of seniors, civil attorneys, bank personnel, nurses with two goals in mind for that training, to not only prevent losses from occurring, but also to encourage the reporting of these offenses once they occur. Also, education of law enforcement, for three reasons, to help them understand this need to be proactive because it really goes against what officers are typically trained. And then the second thing is to help officers recognize criminal elder abuse cases and not tell the reporting parties, no "that's just civil, go see a civil attorney." And third, to teach them how to do these specialized investigations.

I would also, what would be wonderful, and this has already been mentioned by a speaker, is legislation that had permissive reporting. I think the banks are resisting mandatory reporting, but some of them have said to me that they would like to report, but they're afraid of being sued by their customers. So, legislation that would allow more permissive reporters, particularly banks and civil attorneys, would be helpful for us.

Another, I guess this would be more of a solution, this would be more of a need, but with respect to investigative resources, what we really need is dedicated investigators, and that means investigators that are assigned just to elder abuse cases. Because, what happens is, when you have a detective who has a general caseload, the elder fraud cases, because they are so labor intensive, they tend to stay on the back burner. Because an officer waits until they have time to really get involved, and a lot of times that day never comes. I don't know whether or not legislation could be fashioned to mandate the different agencies have dedicated detectives. It may not be possible in all jurisdictions because some agencies are very small. But perhaps legislation that said any city above a certain population would have to have an elder fraud unit. Because I know we've seen here in the county a big difference from city to city, depending on whether or not there is a dedicated elder fraud detective. In Palo Alto we've had a lot of success because they have had Detective Lori Kratzer, for example.

A third area in this conversation about solutions and needs, or solutions to the needs, within the area of prosecution resources, what we also need is dedicated deputy district attorneys. People who are assigned just to elder abuse cases. And depending on the size of the county, you often need more than one because when one of these cases goes to trial, it could tie the DA up. One case could tie the DA up for a couple of weeks. Our county requires at least two full-time deputy district attorneys. Also, in the same column of prosecution resources, these cases require DA investigators, not only to staff the FAST team, but also to be able to respond quickly, to be able to handle or help with really complicated cases, that sometimes the smaller agencies would be just overwhelmed by. And then, also, to help or assist in cases where the cities where the

detectives in the smaller local agencies just haven't had as much experience as our investigators who have been specifically trained. And the third personnel, type of personnel, we need in the DA's office to work on these cases is paralegals. They're tremendously important for intake, also to analyze business records. We have a big case that just came from Stanford where my paralegal has gone, sifted through voluminous bank records to figure out the extent to which an embezzlement occurred. A task that no detective in almost any agency would be able to undertake. And then finally paralegals are very important for witness coordination. There are grants sometimes available, and that makes me think perhaps there could be, just as I suggested, legislation to mandate elder abuse units in the detective bureaus. If there could be some legislation to mandate that counties above a certain size have dedicated deputy district attorneys, investigators and paralegals that would work only on elder abuse cases.

In our county, of course, we're very very fortunate because we have the complete commitment and support of our, of my boss, George Kennedy. And also the FAST team is successful because we've got the support of Betty Malks, the Director of the Department of Aging Adult Services, the Manager for Adult Protective Services, Jamie Buckmaster. We've also got the complete support of our Public Guardian Rob Cecil and his predecessor, Les Lindop. And also, the complete support of county counsel, and specifically in this county, Larry Kubo and Denis O'Neal. Other counties are not so lucky. And what I've seen in traveling around the state and teaching on topics related to elder abuse, is that there's a tremendous disparity in some counties, where detectives will tell me, "The DA won't issue this kind of case. We don't have detectives to work these kinds of cases." And that's why the idea of some sort of legislation that mandates an emphasis on these types of investigations and prosecution comes to mind.

I want to conclude by saying, that if we don't have the resources to aggressively pursue these cases, then what happens is we actually send a negative message to the public that these cases are either not criminal or they're not important. And that's precisely the opposite message that we've been working for almost five years to get across.

State Assemblyman Joe Simitian, Chair:

Thank you very much. Our last speaker on this panel is Helen Karr. Helen, if I could ask you to introduce yourself and then share your thoughts with the public, as well as members of the committee, who will have access to the results of today's hearing.

Helen Karr:

Thank you Assemblymember and Committee for inviting me to be on this panel. I'm Helen Karr and I'm an advocate for the seniors. I volunteer over 1,000 hours a year working in the area of elder abuse, and educating seniors and the public about it. I work in the San Francisco District Attorney's Elder Abuse Unit, and I also work for the California State Bar. I did the research on their latest publication, Seniors and the Law. I'm a San Mateo County

Commission on Aging commissioner, and a commissioner on the California Commission on Aging. And I'm also a California Senior Assemblywoman. So, I'm rather busy. But my whole focus is elder abuse.

California has many gaps in elder financial abuse legislation. There is little or no monitoring of elders' financial documents that are most frequently abused, such as the power of attorney, joint tenancy and other bank accounts. Because these devices permit massive theft and are tools used by the exploiters to quietly steal the life savings and the homes of our senior citizens. Because banks and other financial institutions, mortgage brokers and realtors and title companies refuse to get involved, perpetrators have a license to steal. So, you've heard some examples about elder financial abuse, and I heard one yesterday that involved the long-term care insurance, and a person who posed as an attorney became her financial advisor, and ended up getting all her property, which included her rental property. Therefore she didn't have any money left in the bank, and she didn't have any money coming in.

The majority of abusers, are—60%-90%—are those who care for an elder. They're either paid or unpaid or a family member. And these people are in a position to take over the bank accounts, the bank credit cards, and obtain bank loans using this elder person's property as collateral. And they don't think twice about forcing the transfer of the deed of the senior's home. And elderly persons, you heard earlier, are likely to hide the abuse for a lot of reasons—that they're isolated and they're threatened and as people get older, they don't really have to be demented to be taken advantage of. You can think of a day when you've been very very ill. And think about how easy it would be for someone to take advantage of you, at any age, when you're just not feeling quite up to par. And as you heard earlier, financial abuse, most often leads to diminished health, because once your money's gone and your home's gone, you have no way to recoup any money or to get another home. And you lose your dignity. And a startling number of elderly Californians become impoverished, and they die. And I know personally of cases where the person has died because this crisis keeps going unchecked. And we know that the California Legislature has already recognized the state's responsibility to protect these elders from abuse, neglect, and abandonment and has recognized that because of physical or mental impairment, older adults and dependent adults are at risk of abuse.

So, the California Elder and Dependent Abuse law was modeled on child abuse law. So that was our first problem, because it focused more on the physical abuse and not the financial abuse. And as you've heard, and the statistics show, it's financial abuse that is probably the underlying motive for 90% for all abuse. And recently the National Center on Elder Abuse—they have statistics, and they also said that 1 in 14 incidents of elder abuse come to the attention of law enforcement. So if you want to use just that 14%, and we know it's higher than that for financial abuse, if we have 3.7 million seniors today, aged 65 and older in California, that means 518,000 incidents of elder abuse are occurring right now. If you double that, you're going to have a million cases of elder abuse by the year 2020. And most of these victims are ages 76 to 90. It's documented that as our population ages, the abuse is going to increase, and the financial exploitation is going to dramatically increase because, and I'll quote “with the median

net worth of an average assets minus liability, with the median net worth of older households at twice the national average for all households, financial criminals will follow the money.”

The National Center on Elder Abuse indicated 40% of their verified incidents of elder abuse involve some form of elder abuse. And San Diego said 50% is elder abuse and the state of Delaware says it's 84%. So we do know, according to Chayo Reyes, a retired Los Angeles police investigator, that financial abuse is the fastest growing form and it's the most prevalent. This is interesting, to compound the problem “violent crimes get all the attention and people forget about how serious financial crimes against seniors are. The average amount stolen in bank robberies is \$2,000, for which the robber faces a federal charge and heavy jail time. The perpetrator of elder financial abuse averages \$30,000.” This is a national figure, “and is rarely ever reported, let alone caught.”

So it's a terrible situation. However, we have some good news. The solutions I feel are, number one, to educate our legislators, our law enforcement, our seniors and the public about elder abuse. And one of the ways we can do this is wear this gold elder abuse awareness pin over our hearts to let people know we really are concerned about people in their golden years. And then, the most important key to fighting financial abuse is to mandate financial institutions to be vigilant and report suspected cases to social services, or law enforcement. They have the custody of people's money. So banks, credit unions and other financial institutions are the most important line of defense. And the bankers know this is a problem because right out of their banking journal I can quote, they say the number one indicator of financial abuse is unusual activity in a bank account. They go on to say, “in order to live up to customer and public expectations to prevent fraud, to protect deposits, and strengthen their relationships with customers, retail bankers need to know how to identify situations in which exploitation is likely to occur, as well as the types of transactions.” Because that makes a difference, “which are suspect, and they also need to know how and when to report suspected exploitation.”

There's a new report out, there was a summary done by the State Adult Protective Services Responses to Financial Exploitation of Vulnerable Adults—that's a 2003 report, and that was prepared by the National Center on Elder Abuse. And they had 34 states and Guam respond to their survey, so they have some more statistics for you. And they also state that special efforts need to be made when you involve all professional financial service providers in the process of identifying and reducing financial exploitation. The good news is, that in an opinion letter regarding the legality of Michigan's bank reporting procedures, the seven federal regulatory agencies, who are responsible for enforcement of the Gramm-Leach-Bliley Act, that's the privacy of financial records, stated that reporting suspected financial abuse falls within the exception to the act. So the only excuse the bankers are using that they're liable doesn't hold water any more. Any state can ask their congressmen to have an opinion for them on how this would affect their state. I mean, Michigan's got an opinion and so California can get one. Three states – Florida, Georgia and Mississippi – already include banks as mandatory reporters.

State Assemblyman Joe Simitian, Chair:

Would you repeat the states please Ms. Karr?

Helen Karr:

Uh-huh, Florida, Georgia and Mississippi.

State Assemblyman Joe Simitian, Chair:

Thank you.

Helen Karr:

What this report also pointed out is the existence of mandatory reporting law may actually protect the bank from liability. And that is what I've always said all along because if you are, by law, if you have to report something you are protected from any liability. And actually the liability they have now is very, it's very minor. If there was something, they can't ever, the bankers can never seem to give me any cases that they could point out where they were harmed with this. And if they could, it's a misdemeanor and maybe it's a \$1,000 fine. And that's nothing when you're hearing millions of dollars going out the door of the bank. And it's only going to get worse. I'm almost through. Here's another, and I want to quote this person, because she is in California and she's an executive vice president of a credit union in California. And she says, "Banks are likely to have more protection from liability, if they make reports under a mandatory reporting law, than under a voluntary reporting law." And she goes on to say "We are very much in favor of this type of mandatory reporting legislation." She currently has a training program in place for their staff. She says they have to be careful because they're not mandated reporters. She says this type of legislation would protect her from liability, if they were wrong in their suspicions. And she says, "We do understand many financial institutions do not view it this way, but just another legal requirement, responsibility and expense they don't believe is their domain."

This is another argument I have, the banks are very quick because they are liable if somebody steals my credit card number and uses my credit card. The banks are liable. So they have a real clever way of calling me even when I use my credit card in a different place than I've ever used it. I think the argument that if they can be that sophisticated, they can certainly be sophisticated enough to monitor older people's bank accounts. Then in Utah, who is really, really happy with it, we've had a number of very successful results from the banks reporting. I think having the mandatory reporting law definitely helps. And here's what's interesting. It pretty much ends the discussion about whether a bank should report, and it changes the focus of what they need to do to report, and how we can work together to help provide our customers with protection provided for in the laws. So the good news is even though we have a lot of this, we can certainly have some legislation to mandate our financial institutions to be reporters of elder abuse. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much. Let me ask if, before we take a break, we can bring our next panel up to talk about physical abuse? Let me ask if there were comments by panelists that prompted a reaction, or one more thought from others on the panel? Additional comments if any?

Cindy Seeley Hendrickson:

Assemblyman, I would just echo what Ms. Karr said about the sentences. I've heard that quote about \$2,000 being the average amount taken in a bank robbery and, of course, the penalties are way more severe. Just to let you know, usually in this county, and this county is very conservative, this is one of the better counties in the state, to be a prosecutor anyway. Still, if someone steals under \$100,000 they're probably looking at jail. They really need to steal usually more than \$100,000, unless they've got priors. So, ...

State Assemblyman Joe Simitian, Chair:

Jail as contrasted to prison time?

Cindy Seeley Hendrickson:

Before they go to prison.

State Assemblyman Joe Simitian, Chair:

Okay. Yes, Ms. Mancini?

Lisa Mancini:

Thank you. I would also like to echo something that was said regarding the law enforcement and having there be some sort of legislation or mandate for an elder abuse unit. We do have a multidisciplinary team meeting where we meet with our 23 jurisdictions. The problem is there's a rotation, so once we finally get someone who's right there with us on elder abuse, then they're rotated off to a different assignment.

State Assemblyman Joe Simitian, Chair:

Like serving in the legislature. Good. And is there a solution to that problem, in all seriousness? Is it simply to ask the affected agency...

Lisa Mancini:

It's actually something to ask the affected agencies. We have put in special requests when we've had certain detectives on board who we wanted to rotate again, back onto the same shift. We have talked with their chiefs. We were able to be successful in one instance. And I just don't know what could be done with that.

State Assemblyman Joe Simitian, Chair:

Detective Kratzer?

Lori Kratzer:

Yes, just to comment on that. I think training and cross-training patrol officers and detectives, most departments do rotate, that's supposed to be the modern way we do things, where you don't stay a detective your entire career. But, with these complicated cases, I think patrol really needs to be educated and trained, maybe not in the fine specifics of it, but when you have detectives going back to patrol that have all this experience. You also have a great resource out there for detecting cases that are, you know, going to be reported at patrol level. And I would just say more detectives, I mean, that's hard to say because most departments can't do that right now.

State Assemblyman Joe Simitian, Chair:

It's a good news-bad news proposition. The good news is you have a wider range of your folks who are aware of and capable of responding to these issues. The bad news is you're constantly obliged to educate and inform new folks who are coming in to critical roles in the process.

Lori Kratzer:

I really think we can do more with what we have now without spending a lot more money. I can't emphasize that enough, because it's just, it's a training issue, it's an educational issue, and it's the collaborative work with other agencies, like APS and public guardian to refine it a little bit. And actually we could do a heck of a lot more with what we already have.

State Assemblyman Joe Simitian, Chair:

I'm outside my area of expertise and training, but is there a role for POST, the Police Officer Standard in Training, in this area?

Lori Kratzer:

Yes, we do have mandated training. I actually do training myself and have trained our first responders from the fire department, paramedics and our patrols, and other detectives in this

area. But I think every department needs, we need to start this more at the academy level, also. Because this isn't going to get better, it's going to get worse just with the population shift.

State Assemblyman Joe Simitian, Chair:

Thank you. Any other comments? Just a couple of brief comments before we take a very short break and bring our next panel up. First, to say thank you to the panelists. We were really richly blessed to have a very capable group here to inform, not only my thinking, but also that of my colleagues and members of the public who are here. Thank you very much. I neglected earlier to say thank you to the County of Santa Clara for hosting us today in this facility, and I want to thank them. They're always very gracious and helpful in cooperating with the state whenever we've made a request and I want to thank them for that.

I want to highlight a couple things that came up as we talked. I think it was Ms. Mancini (who) mentioned AB786, just in passing. For those who are unfamiliar with the legislation, this is a measure that my colleague Lynn Daucher, who is a member of this Select Committee and who chairs the Assembly's Aging and Long-Term Care Committee. She was the principal author and I was a joint author with her. It was an effort to look at some of these issues. And to use San Mateo County as a pilot project, if you will, to see (if) there are ways to allow more flexibility and more creativity in responding to some of the issues involving elders. I would encourage you, if you haven't taken a look at the legislation, please do, and if you need help in identifying how you can access that information, my staff in the back, Ms. Loquist, who you saw earlier, and Ms. Millsaps, who you saw earlier as well, would be happy to get you to AB786. It was something I was very happy to work on. And Ms. Daucher really deserves the lion's share of the credit for her lead on the measure.

The FAST teams that were discussed, I'm pleased to hear they're still working well. This was an area where I had the ability to do some work when I was on the Board of Supervisors. In fact, some of you will know, but many of you may not, in my first year in the State Assembly, I authored legislation to try and expand the FAST team concept around the state and provide some financial incentives. It was well received in the State Assembly but by the time we got to the State Senate, the state's financial situation had made itself more than a little evident. I'm afraid we were stymied simply by the lack of resources. Two other developments in this area, before we get to the next panel. Last year—2002, I was able to win passage for a new law increasing penalties for elder abuse and physical abuse, and that may come up in our next panel. I was pleased about that. This year, Assemblyman Steinberg and I joint authored a bill to try and make sure that secrecy wasn't a problem with respect to abuse in nursing homes. So we made some progress there, and more in the physical abuse area than the financial abuse. But these are some areas where my colleagues and I have been trying to do some good work. If you have an interest in any of the things I mentioned, please see my staff.

I want to recognize, I know Assemblymember Sally Lieber has staff here today. And I want to thank her for sending members. I don't know if there are other legislators who have staff here

with us today. Could we ask you to just stand and identify your office please, if you're here on behalf of another member of the Legislature.

Thank you. Others?

Thank you to you all for being here, thank you to your members. As I mentioned at the outset of the meeting, other members are being called from around the state to be in special session later today, the very place I will be headed immediately upon the conclusion of this hearing. So we thank you and your members for sending representatives. There will be a copy of the tape available to share, and both with your staff colleagues and the members. I find it a useful way to use the drive time between the Bay Area and Sacramento. Thank you again to our panelists. If I could ask members of the public to join me in giving them a round of applause and thanking them for their comments. (APPLAUSE). We will take a five-minute break, and that's a real five minutes, not a government five minutes. A five-minute break and we'll be right back. Thank you.

Financial Abuse Panel: Problems and Solutions

State Assemblyman Joe Simitian, Chair:

If we could ask members of the public to take their seats, please. And if we could make sure that Michele Schroeder is in the front and center and ready to present, and Daniel Nishigaya, Pat McGinnis, Diana Koin and Jamie Buckmaster for a return engagement here. If we could ask you all to take your seats. Could I ask members of the public to take their seats, as well. Shhhh. All right, thank you very much. We are now about to start our second panel. This is the panel dealing with issues of physical abuse, looking at problems and solutions, underscoring solutions in this case. We will again go through the five panelists. I'm going to suggest we start with Pat McGinnis, as our first panelist. She's racing back so she can be the first panelist. Put her on the spot there. Sorry, Pat. And then to be followed by Michele Schroeder, to be followed by Jamie Buckmaster, to be followed by Daniel Nishigaya, to be followed by, I believe that leaves, Diana Koin. Let's do it in that order then.

We will, again for those of you who arrived late, as I mentioned, my colleagues on the committee are from all around the state headed to Sacramento. We have a special session of the Legislature later today about what you may have been hearing. That will mean I will (be) stepping away promptly at 4:00 p.m., as well, to get back up to the Capitol. The comments today are being tape-recorded and will be shared not only with the other offices, but with their staffs, as well. We do have representatives from a number of legislative offices who are here so they can brief their representatives from both the State Assembly and State Senate. I want to thank Assemblymember Lieber and Assemblymember Manny Diaz and Senator Sher for sending representatives to today's hearing. All right, then. Let's begin with Pat McGinnis. Pat, if you will introduce yourself briefly, so we know the perspective you bring to bear, and then talk a little bit about problems and solutions with respect to physical abuse in your experience.

Pat McGinnis:

My name's Pat McGinnis. I'm the Executive Director of California Advocates for Nursing Home Reform, a statewide community-based organization. Our offices are in San Francisco, but we have a statewide toll-free number for consumers. I want to thank Assemblyman Simitian for hosting this hearing on such an important issue and for the opportunity to share our concerns. Since 1983, California Advocates for Nursing Home Reform, "CANHR," as it is known to many of our family support group members in Santa Clara County, has worked to educate consumers about their right to nursing homes and residential care facilities and to identify those issues that are of greatest concern to consumers and to work for improved quality of care. Physical and fiduciary elder abuses are certainly priority issues for our office. In fact, I believe Prescott Cole from our office will be speaking at the Santa Cruz hearing on fiduciary abuse issues.

Over the last couple of years, in particular, we have provided training to the legal staff and the investigators at the Department of Insurance, at the Department of Corporations. We'll be going down to Los Angeles next week to do training again for the legal staff and investigators at the Department of Insurance about fiduciary elder abuse issues. Our very first bill that we sponsored in 1986 was a bill authorized by Senator Henry Mello that added the inappropriate misuse of physical and chemical restraints to the elder abuse laws in California. So we've been involved in this issue for many, many years.

There are obviously many forms of elder and dependent adult abuse. My focus today, at least for the next couple of minutes, will be on institutional abuse, i.e., particularly on nursing homes and residential care facilities because the incidents of abuse in residential care facilities for the elderly is also greatly on the rise.

California's elder abuse law is a very powerful tool. However, we know from experience that the passage of a law in and of itself will not have a deterrent effect on abuse. We know from the history of long-term care in California that enforcement is the key. If a law is not enforced, if it's not enforced quickly and swiftly, then it's not going to be effective. We've also learned the two greatest barriers to the identification and prevention of elder abuse in nursing homes is: 1) fear of retaliation; and 2) acceptance of substandard care as the norm. Fear of retaliation is probably the heaviest barrier to reporting of abuse. Residents who are able to communicate are very fearful of further abuse and punishment. And the resident's relatives and friends are also fearful of reprisals. After all, it's their mother or father there, or husband or wife, who is going to be staying in the facility long after we're gone. This fear of reporting abuse has been very frustrating to the long-term care ombudsman, to enforcement agencies and other patient advocates involved in this process, but certainly can be understood in light of the circumstances of the marketplace.

Nursing homes, unlike grocery stores and gas stations, are a providers' market. Few consumer options are available, particularly to those who are Medi-Cal eligible. Most often the choice of the consumer is dictated by whatever facility is available, whatever facility is willing to accept the resident, particularly if the resident is Medi-Cal eligible. It is the very rare case when a Medi-Cal patient is able to find a second nursing home, if he or she is dissatisfied with the care in the first facility, even if he or she is abused. So given that there are few protections against retaliation, few alternatives for placement, and very few remedies for residents in the first place, it's little wonder most residents are unwilling to air grievances and that a lower substandard level of care has really become the norm in California.

I've been involved in this business, and long-term care issues, for over thirty years in California. I worked as a nurse's aide, I've been a patient advocate, I've been the founder and director of California Advocates for Nursing Home Reform, and never, ever, in the history of my own work have I seen so many horrible incidents of physical abuse in facilities in this state. There's no question that elder abuse in institutions is on the rise. Physical abuses such as assault/battery, and sexual assault are almost easy to identify compared with other types of abuses. Generally, it's not the overt violent acts that are the most common, but the neglect, the intimidation, the deprivation of care. Residents and their relatives, potential consumers and even enforcement agencies have started to accept things such as understaffing and the Medi-Cal reimbursement rate as excuses for providing poor quality of care, and indeed, as excuses for what amounts to elder abuse. I have been in numerous legislative hearings over the years, and listening to the nursing home industry get up there and tell our legislators, "Well if you just give us more money, we'll provide better care. If you could just get the staff, we'll provide better care." And I'm here to tell you it doesn't matter how much money you give them, there is no excuse for abusing elders in nursing homes.

The crucial question today that I ask is at what point do we stop viewing dangerous and unacceptable resident care practices as simply poor patient care or a violation of residents' rights, and start identifying these practices as elder abuse? I'll give you a couple of examples locally. A 92-year-old San José resident (this happened very recently) lost 10% of his body weight in less than a month. After being given a flu shot without any assessment for possible contraindications. That same day he was transferred to the acute care hospital where he was found unresponsive and with breathing difficulties. Now, he lost 10% of his body weight over a month, and nobody reported anything to his doctor. Another San José woman died shortly after being admitted to the hospital from a nursing home. Her death was attributed to sepsis, probably from a ruptured appendix, a condition that wasn't detected at the nursing home for over a week. Are these patient care problems as determined by the Department of Health Services, or are these neglect issues under the elder abuse laws in California? Another example, in a Morgan Hill facility, when a partially paralyzed resident refused to take a shower because bed baths were easier for her condition, staff members dragged her screaming down the hall naked to the shower. She suffered a bruise on her hand and a skin tear on her forearm.

In one San José facility, recently, a CNA was changing an elderly woman's diaper. When the woman complained about being treated roughly, the CNA threw the wet diaper in her face. And another San José facility, this happened a couple years ago but for some reason this sticks in my craw more than some of the other things in the river of abuse we see on a daily basis. An elderly gentleman was 87 years old, he had a mustache all his life. He was in the facility, and even though he had family who said leave it alone he just shaved, they decided they didn't like the mustache and they shaved it off. Is that abuse or is that just a violation of residents' rights?

These may be minor things on some level, and (on) other levels there's issues of death. When residents are tied into wheelchairs for 10-12 hours a day, and forced to be incontinent and non ambulatory, is this unreasonable physical constraint, as defined under the elder abuse laws, or is this an acceptable standard, of care because a lot of nursing homes do it? There are a number of nursing homes in California that provide adequate and above standard, and even excellent care. Not a whole lot, but there are some. It is to these facilities that we should look at the standard of care and really only when we let it be known that anything less is unacceptable, will we be able to stop the abuse and neglect in these facilities. I have a number of recommendations and I'm not going to go over them all because I know you're limited on time and you need to get to that hearing in Sacramento.

State Assemblyman Joe Simitian, Chair:

Take all the time you need.

Pat McGinnis:

I did bring along for you a copy of our recently released report about debunking the myth of frequent and frivolous elder abuse laws in California. And a copy of some of the recent citations that have been issued against Santa Clara County facilities. These don't even include the deficiencies, these are just citations. I also submitted a copy of my written testimony with all of the recommendations but I just want to highlight a couple. Abuse doesn't happen in a vacuum. It happens in an atmosphere that tolerates neglect and abuse. Obviously what other people have talked about, training of policemen, and training of the district attorneys offices, obviously we need far more trained nurses in California. The attorney general has done an absolutely wonderful job in developing a video on mandatory reporting requirements in California and it's something that should be utilized in every nursing home in California. It's also done a great deal to protect CNAs. Administrators who refuse to report abuse should be sanctioned immediately and subject to compulsory training on elder abuse laws.

There are a number of issues regarding enforcement. I think we have one of the worst enforcement atmospheres that we've ever had in California under the Department of Health Services, particularly the licensing and certification. They need to train their staff on the difference between abuse and patient care issues. They need to immediately execute a memorandum of understanding and cooperation with the attorney general's office and the local

district attorneys' office to share information, particularly citation reports of abuse, and to commit to protect residents and combat the abuse and neglect in facilities.

(There are) just a couple of issues on protection of residents. We really need stronger laws to protect residents and their family members from retaliation. Right now the laws that we have are really toothless tigers. Residents and their family members should not be coerced into signing away their constitutional rights as a condition of admission by being forced to sign mandatory arbitration agreements. Right now, AB1448 by Assemblywoman Liu is pending on the Assembly floor, and I think this bill absolutely needs to be supported and passed into law. The nursing homes and other institutions are using these as an excuse to deny frail, very ill people their constitutional rights. We need to amend the Health and Safety Code 1430 to put some teeth into enforcement of the residents' rights provision. We also need to amend the elder abuse laws not to do what the nursing home industry is proposing to weaken it, but we really need to strengthen it and lower the burden of proof, so more people will be able to obtain some remedies under the law. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much for your comments. The, I know you have prepared written comments, thank you, but as we were beginning you mentioned that rather than the more visible abuse, we were more inclined to see three things, one was neglect and one was intimidation and I'm afraid I did not catch the third.

Pat McGinnis:

Deprivation. Deprivation of hydration and nutrition, particularly because so many people to end up with sepsis. You see every day, you know, people having their limbs amputated and the horrible things that happen. These things don't happen when you have the care in the facilities.

State Assemblyman Joe Simitian, Chair:

Let me ask now that we hear from Michele Schroeder.

Michele D. Schroeder:

Good afternoon, and thank you for giving me the opportunity to be here. My name is Michele Schroeder. I'm the supervising attorney for Senior Adult Legal Assistance, also known as SALA, which is a nonprofit legal services agency that provides free legal assistance to Santa Clara County residents aged 60 and over. We provide assistance in the area of elder abuse, public benefits, incapacity planning and other legal issues. We target elders who are low income, who are at risk of abuse or exploitation. Elder abuse is an area that we focus on and, unfortunately, represents more than one-third of our open caseload. We use the elder abuse, domestic violence and civil harassment laws to obtain civil restraining orders to protect seniors

from their abusers. These restraining orders are separate from any criminal prosecution of elder abuse, which is handled by the district attorney.

Now, Pat talked about institutional physical abuse of elders, and I'm going to talk about a different side of elder abuse. The typical case that we see involves a senior living independently in his or her own home, who is being abused by an adult child or grandchild living in the home with the senior. More often than not, the person abusing the elder is addicted to drugs or alcohol, or in some cases is mentally ill. A common thread in many of these cases is the high priced housing market in the Silicon Valley, that has forced families, including those who are dysfunctional, into shared living arrangements. We also see cases involving elders on limited fixed incomes who rent rooms to tenants who become abusers. And cases involving elders who are victims of spousal abuse. Although these two scenarios are not as common as abuse by an adult child or grandchild.

The physical abuses that we see include hitting, kicking, shoving and knocking the elder down. In some cases, the abuser has not yet physically harmed the elder, but has threatened to do so. Threats such as "I'll kill you," or "I'll burn the house down," are very common. In almost all cases, the physical abuse threats are accompanied by verbal and emotional abuse designed to intimidate the elder. We receive many referrals directly from the Superior Court. The court operates a clinic in which people who need restraining orders obtain assistance in filling out the paperwork. Because our target clients often have problems representing themselves, the court clinic refers them to SALA. We also receive many referrals from APS. And, in turn, often refer clients to APS. APS generally refers legally competent elders who need restraining orders to SALA.

During the last three years, SALA has received funding through the San José Health Neighborhood Venture Fund for our hotline, which clients can call if they are victims of elder abuse. The hotline allows us to respond to urgent cases, primarily elder abuse cases, in an expedited manner. In cases where there's been an assault or threat to assault, we can obtain a restraining order under the Elder Abuse Protective Act or the Domestic Violence Act to remove the abuser from the home. Elders who obtain restraining orders against their children or grandchildren usually feel compelled to take this action as a last resort. They often have put up with abusive behavior for many years hoping things would change. Although they are afraid of their abusive children, they are still protective of them, and are often reluctant to report the abuse to police because they do not want the abuser to be criminally prosecuted. For some elders, the emotional burden of distancing themselves from their abusive children is so great they lose their resolve to pursue a restraining order, even after initiating it. It is not uncommon for our clients to withdraw their restraining order petitions only to contact us again a few months later because they are still being abused.

Now in terms of solutions, other panelists, particularly on the financial abuse panel, mentioned education and outreach efforts, particularly by Adult Protective Services. We're very fortunate in this county that APS has been able to make such efforts, and much progress has been made

in increasing public awareness, which we believe has resulted in more elders contacting SALA for assistance. We recommend that funding be maintained so that APS can continue its efforts in education and outreach. In addition, more resources to support the physical and emotional needs of our clients who suffer from elder abuse would be particularly beneficial. Next Door Solutions, a domestic violence nonprofit agency in San José, recently established a program specifically for older woman, who are being abused. They offer emotional support and physical shelter to older women who are being abused by partners and family members. More of these kinds of programs should be established and expanded to cover elderly men who are being abused, as well. Support groups made up of other elders who have experienced abuse from family members would provide needed emotional support for our clients who find it so difficult to separate themselves from abusive children. (There is a need for) more resources for family counseling for dysfunctional families where elder abuse is an issue. Mental health counseling for abusers who are mentally ill might also be very helpful.

I'd like to mention just one other issue before I close. Although we focus on the issue of physical abuse, we have noticed that some of the calls to our hotline involve situations where the elder is not being physically abused. At least, not yet. Unlike the scenarios I have already described, these cases usually involve an out-of-control, younger family member who is living with the elder and significantly disrupting the elder's life. Frequently, there is verbal abuse and intimidation, causing stress that can affect the elder's emotional and physical health. Under the elder abuse and domestic violence laws, there has to be an assault or threat to assault before a temporary restraining order or kick out order can be issued. Furthermore, many of these elders do not want restraining orders. They just want to get the disruptive family members out of their homes.

Generally, we advise clients in these situations to use the eviction laws to evict the out of control family member. However, using the eviction laws it can take up to 60 days to evict, or even longer if the elder has to go through an unlawful detainer trial. This is a long time for an elder to have to live with someone who is verbally abusive and disruptive. Furthermore, once an eviction notice is served, there is the potential for the disruptive individual to become physically abusive in retaliation against the elder. We at SALA believe that making it easier for elders to evict or remove the disruptive family members might address some of these problems, even possibly prevent elder abuse. We currently advise many clients to use the civil code section that applies to evicting a single lodger from an owner occupied dwelling. This is often not an ideal solution, and we hope that other legal remedies might develop to deal with this situation. I don't have anything specific in mind, and we don't have time to talk about the statutes, but I could provide further suggestions upon request. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you. And we will follow up with you on that specific issue. Thank you. That brings us back to Jamie Buckmaster.

Jamie Buckmaster:

Hi. My name is Jamie Buckmaster. I'm the manager of Adult Protective Services in Santa Clara County. It's part of the Department of Aging and Adult Services, which is part of the Social Services Agency. Physical abuse is one of the nine types of abuse that is reported to Adult Protective Services. One of our earlier speakers, Lisa Mancini, mentioned that generally we don't get one type of abuse when it's reported to us. Today, of course, we're going to concentrate on physical abuse.

State Assemblyman Joe Simitian, Chair:

Ms. Buckmaster, I apologize for interrupting and I also don't want to give you a pop quiz to put you on the spot, but we've talked about financial abuse, we've talked about physical abuse. You mentioned nine types of abuse. Can we hear the other seven so we know what the range is, and if someone needs to help you out with the ninth one, which always happens to me, apparently you think you can recall them all for us.

Jamie Buckmaster:

I can take a good shot at it. Physical, neglect, self neglect, sexual, abduction, isolation, mental suffering, financial, how many was that, 8, 9, sexual.

State Assemblyman Joe Simitian, Chair:

You got it. We'll come back, but it would be helpful to have the full range of abuse.

Jamie Buckmaster:

Abandonment.

State Assemblyman Joe Simitian, Chair:

Thank you. Good, thank you.

Jamie Buckmaster:

It's on the reference card in the back of the room.

State Assemblyman Joe Simitian, Chair:

Thank you very much.

Jamie Buckmaster:

Usually I know that, I'm just a little nervous. The typical victim that we see in Adult Protective Services is an elder female. About 66% of physical abuse perpetrated by others is perpetrated towards an elderly female, generally in her eighties. One of the things I should mention before I start talking about what we see is what our purview is. Pat McGinnis mentioned the long-term care ombudsman program in terms of looking at those kinds of abuses that might occur in a skilled nursing facility. Adult Protective Services generally covers the entire community with the exception of the skilled nursing facilities and licensed board and care. We also investigate allegations of abuse that might be perpetrated in acute care facilities, some of the hospitals. Our goal is to investigate the types of abuse that I've talked about, for both elders 65 and older and for dependent adults who are 18 to 64, who for physical, mental or emotional reasons can't advocate for themselves or carry out normal activities.

As I said earlier, the typical victim of financial abuse perpetrated by others is female, probably in her eighties. Michele mentioned many of the types of things we see in Adult Protective Services that we refer to SALA to help obtain restraining orders. But let me go over some of them. Kicking, punching, slapping, pinching, kicking, choking. We've seen cases where elders were restrained to a large piece of furniture, like a dining room table, by a rope and they couldn't wander. In one case, prior to the physical abuse, one of my social workers went out to a case and saw a perfect 6-foot by 6-foot by 3-foot grave dug in the backyard. The drug-addicted grandson was going to throw the elder into the grave, bury him so he didn't have to worry about funeral costs.

The solution that I'd like to talk about has to do with statistics reported to the Department of Justice. We're really lucky in this county, in terms of prosecution. Earlier we had Cindy Hendrickson speak and she does a lot of prosecution in this county. But one of the things that is not their fault, but it's the way data is collected about elder abuse, is the number of reports that actually get to the Department of Justice. What Adult Protective Services would like to propose to you is the creation of an umbrella code for reporting the incidents of elder and dependent adult abuse to the Department of Justice. This would be similar to the Penal Code 13730 which requires the reporting of domestic violence related calls to the Department of Justice. Data that's collected on elder abuse in the State of California is sadly underreported. We know how many reports we take every single month in this county and across the state, and that translates into almost no cases when it finally gets to the Department of Justice. This would ensure that we could get an actual look at the amount of elder abuse that's out there.

We know that only 1 in 14 incidents of elder abuse actually gets reported. And so what we're looking for is some legislation that would create this umbrella code, so we could actually get a really good grip on what kind of elder abuse is out there. We know it's out there, we know it's the tip of the iceberg, and we're concerned for all those folks out there who are getting physically abused, neglected and so on and so forth. I do have some, a little bit of proposed language that one of my peers developed. And I'd love to be able to give it to you. Not only

would it be important to collect the data, but we could take a look at what kind of response we want to make to the most important investigation of abuse, against the frail and vulnerable.
Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much for your comments. We will work with you and look at the language as well as the concept.

Jamie Buckmaster:

Thank you very much.

State Assemblyman Joe Simitian, Chair:

That brings us then to Daniel Nishigaya. Please introduce yourself. Thank you for being here.

Daniel T. Nishigaya:

Yes, thank you, and it is a pleasure to be here. I am Dan Nishigaya. I'm the deputy district attorney here in Santa Clara County. I currently work in our physical abuse of children and elders unit, and I have been doing that for about three years. Here in Santa Clara County we have two deputy district attorneys dedicated to the review and prosecution of cases of physical abuse, neglect and endangerment of children, elders and dependent adults. Rightly or wrongly, these same lawyers do not handle the elder financial cases. That's Cindy Hendrickson's unit and she's already spoken. We do not handle cases of sexual assault. What I want to talk about today is the prosecution and punishment of those perpetrators who commit the most serious crime of physical violence on some of our most vulnerable members of the community, those being elder and dependent adults, although that's not our focus today. What I'm going to do is say something that's probably stereotypical for a prosecutor, which is to argue that these most serious perpetrators of the most serious crimes should be receiving a more serious time in custody.

I understand saying that arguing for increased penalties for criminal conduct is certainly not a solution in all circumstances for a broad-based problem. But when the problem is offenders not receiving appropriate accountability for their crimes, that, of course, is the most direct solution. In addition, I do believe that the way the most serious elder abuse cases are handled sends a message and has a trickle down effect with respect to the less serious cases. And if we do not show that we are handling our most serious cases in the most serious way, that has an effect on how our elder abuse prosecutions are being handled generally.

As with child abuse, where for years we've had a problem as prosecutors in dealing with the concept of children as chattel, as property of their parents, and somehow lesser human beings,

when it comes to the physical injuries that are inflicted upon them. There still is, in my opinion, at least in this county, a perception with respect to physical elder abuse, that our victims are somehow second class human beings, because of the fact they're already frail, or perhaps they don't have that much longer to be with us, anyway.

We recently had a case that involved a purse snatching robbery of an elderly woman. In the course of the purse snatching, she was thrown to the ground, she broke her hip and had other injuries. She subsequently died, and I'll talk about that in a minute. When this case was brought to court for a pretrial discussion, the public defender on this case said something to the effect (of), "Well this wasn't really great bodily injury under the law, was it, because you know, she was already pretty frail and it probably didn't take very much to hurt her." This is the attitude and perception that we still, on occasion, have to deal with in the criminal court. And what I want to talk about today is the punishment under the California statutes with respect to those who inflict what the law calls great bodily injury upon elders and dependent adults.

Currently, we have some code sections that have been useful in increasing the amount of prison time when a person commits an act of violence against an elder and is sent to prison. That person can receive an additional prison sentence. Currently, if you commit, if you inflict great bodily injury on an elder 70 years or older, you can receive 5 years enhancement to your prison sentence for that. Although our elder abuse statutes cover individuals 65 or older, we do not have any special great bodily injury provisions between 65 and 70. In the child abuse situation, and in a situation of domestic violence, in which great bodily injury is inflicted, what the Legislature has given us is increased penalties for that infliction of great bodily injury and a range of punishment that a sentencing court may look at. And what I would propose is we have something similar in the case of elder physical abuse. Particularly in those situations in which great bodily injury is inflicted on an elder, and there are aggravating circumstances with respect to that great bodily injury. I believe the courts should have a range and some increased options with respect to great bodily injury.

With respect to the elderly woman who was a victim of the purse snatching robbery, she died approximately two months after the robbery. It is unclear at this time whether we will be able to prove legally a connection between the robbery and her death. However, what is very apparent is that she had to spend the remaining days of her life in a care facility, that she would not otherwise had to have been in, had she not been the victim of this violent crime. This, in my opinion, was a case of great bodily injury that had aggravating circumstances. Unlike some of our other community members, the infliction of great bodily injury on an elderly person, although perhaps not technically different than such an infliction on another individual, sometimes causes permanent effects and the person will never recover from that.

We have also recently had a case in which an elder was attacked on a county bus, suffered significant injuries including a skull fracture and brain injury. That gentleman was never the same. Our options with respect to prosecuting the perpetrator and receiving additional punishment for the infliction of great bodily injury were limited. As has been discussed in case

law in other forums throughout the years, sometimes it's very difficult to prove murder charges in these kinds of cases. And I'm working for additional options.

What I would propose is that there be an amendment to Penal Code Section 12022.7(c), which covers the infliction of great bodily injury on people 70 years of age or older. That would include a provision for inflicting great bodily injury upon a person 65 to 70 years of age. That would allow the courts to impose a punishment range of either 3, 4, or 5 years additional time in state prison. And then with respect to individuals 70 years or older, I would propose that the court have a range of additional punishment up to 5, 6, or 7 years. I think the way we handle these more serious cases, giving prosecutors the options to hold perpetrators appropriately accountable for inflicting these types of injuries on our most vulnerable members of the community, not only achieves just results, but also sends a message with respect to all of our physical elder abuse prosecutions.

The other thing I wanted to mention today with respect to prosecution of physical elder abuse, although we've heard that many times elder abuse, both physical and financial, is perpetrated by somebody who knows the victim, either a family member or caregiver, that is not always the case. California law requires in our physical elder abuse prosecutions, that we prove that the perpetrator knew that the victim was an elder or dependent adult. I disagree that should be a requirement under the law, for a variety of reasons that I don't necessarily need to elaborate upon here. We are not the only state that requires the actual knowledge, but not every state does. I have learned that at least four states—Florida, North Dakota, Utah and Wisconsin—do not require actual knowledge that the victim of an assault be an elder or dependent adult. I find a discrepancy in our own laws with respect to this issue under Penal Code Section 368 (d), financial abuse by a non-caretaker. The law simply requires that the perpetrators know, or reasonably should have known, the status of the victims. With respect to Penal Code Section 368(f), which prescribes additional punishment for false imprisonment of an elder, there is no knowledge requirement at all. With respect to Penal Code Section 667.9, which provides for an additional year in prison for certain violent crimes committed against elders, the disability or condition of the victim must be known or reasonably should have been known by the perpetrator. And I believe this discrepancy should be corrected. Either eliminating the knowledge requirement entirely, which I would support, or making it consistent with other California laws that require actual knowledge or that a reasonable person should have known of the status. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much. You, I thought were very helpful in terms of the three different standards that might apply in terms of new, reasonably, should have known, or no knowledge going back to the issue of great bodily injury, an additional measure of discretion. If you could give me some sense of the relative importance of that set of issues, as contrasted with the obligation to prove someone knew that they were dealing with an elder or independent adult.

Could you give me some sort of rough sense of priority there and relative importance? Not to dismiss one to the exclusion of the other.

Daniel T. Nishigaya:

Yes, I would respond that my first comments with respect to great bodily injury would, in my mind, be more important. Although there are cases that cause us problems in terms of having to prove beyond a reasonable doubt the perpetrator knew the victim was an elder, we usually can overcome that. And that's a limited number of our cases. I think, as I mentioned, with respect to the overall impact on elder abuse prosecutions across the board, the first comment would be more important.

State Assemblyman Joe Simitian, Chair:

Thank you. I suspect you know, but others may not, on the issue of greater penalties, this is a challenge given the current climate in Sacramento. I worked last year, as I referenced earlier in passing, with District Attorney George Kennedy and Rolanda Pierre-Dixon from the DA's office, on additional incremental sentencing for simple battery against an elder or dependent adult. And was struck, as I worked my way through the process, just what the resistance was even to that somewhat narrower increment. I know you're aware, as you make the suggestion, it would be difficult. (That) doesn't mean it's not worth pursuing. So, thank you, on both measures. That brings us to Dr. Diana Koin. Dr. Koin, welcome and thank you.

Diana Koin:

Thank you very much for having me here today, and I want to thank you for all the work you've been doing on behalf of elder abuse and neglect. I am a practicing geriatrician at a retirement community on the Peninsula. With my other hat on, I'm the Director of Adult Abuse Education for the California Medical Training Center Project based in Sacramento at UC Davis, where our charge is to educate healthcare professionals and law enforcement throughout the state about elder abuse, as well as other forms of interpersonal violence, sexual assault, child abuse and domestic violence.

I would like to start by underscoring how serious the problem of physical abuse is. Some excellent research has been done by Dr. Mark Lachs at Yale. He found that elder abuse victims have a three times greater mortality rate than the control group, that had an equal number of comorbid conditions, the same age, the same frailty, and whose death was not due to elder abuse. In addition to the actual trauma that the victims incur, there's another mysterious black cloud that goes with this problem. And it has really lethal consequences. We've heard many wonderful suggestions today, so I'll limit my comments to just a couple of nuts and bolts kinds of things, that I've become aware of. I have the privilege of having a wonderful advisory board that keeps our curricula on track. In addition, part of my job has been to be out and about

throughout the State of California, big and small towns, giving grand rounds to physicians. So I'd like to be sure to include their perspective for you, as well.

I think we have two major areas of problems, one of which has already been covered, and I'll just add a little bit to that, and one is—that's the data collection. I'd like to really focus on some of the practical problems we have about reporting. One of the issues that continue to come up is, "Where do I call?" When I speak to physicians and I explain that, well if you live in a community you call APS, and if you live in a facility you call the Ombudsman. I really get an instant glazed reaction. We're really making it tough for people to get it straight about who to call. In addition to initial vectors they have to decide, they have to also think, of course, whether the police should be called? Whether maybe the DA should be called? And in many instances, in institutional care the Department of Health Services, Department of Social Services, Department of Mental Health, and the Department of Development Services? So it gets to be a real project to report this really important crime.

Secondly, with regard to reporting, there are increasing numbers of questions about which reporting forms to use. Traditionally, SOC341 has been the reporting form we've used, which is almost impossible to find on the Internet, unless you have a bookmark and can go back to it. But I've been part of the project to develop a forensic reporting form. But it's really intended to help prosecution to make sure they have all the information to move forward with successful investigation and then prosecution. We also now have the SIR report, Suspicious Injury Reporting form. And unfortunately, in cases where people are victims of domestic violence, sexual assault, they might add these forms to the mix as well. Again, we're starting to end up with a little too big a shopping list to make this a very easy proposition.

The third reporting area I wanted to mention today that's problematic is that of our physician colleagues. My physician colleagues who are a little slow on the uptake. We know that in California we're doing a little bit better than Michigan. We're on 2% of the APS reports are filed by physicians. California is approximately 8%. But this is clearly way below the kinds of cases to which physicians are exposed and they are not coming forward about that. And last but not least, particularly since this Committee is about privacy, I think we need to also factor in what impact HIPAA has had on elder abuse cases and investigations.

State Assemblyman Joe Simitian, Chair:

And for members of the public who may not be aware of what HIPAA stands for.

Diana Koin:

Health Information Portability and Accountability [Act].

State Assemblyman Joe Simitian, Chair:

HIPAA. Thank you.

Diana Koin:

It was a well-intended piece to maintain privacy in the world of insurance. But what has happened, in fact, is as we move forward to work with elder abuse cases, the data is locked away from us. There is a solution, however, and I'll come to that in a few minutes. But I think one of the things that we do is kind of puzzling for health professionals, for hospitals, and local records departments in hospitals, is what to do about these legal issues, and they find it very confusing.

So let me switch gears and talk about some potential solutions for you. With regard to this chaos about who to call and what forms to use, I think we really are a little overdue in having, if you will, an elder abuse summit to create very clear, very simple guidelines about what you do, when you do it, and all those kinds of things. We need to be very straightforward, and to make the reporting as manageable as possible. Definitely, with regard to the issue that physician are not particularly involved, I think that, needless to say, we need to continue with education to help the professionals, because a lot of the difficulty in fact, is somewhat generational. Older physicians who have not had training in interpersonal violence, really need to have exposure to this. Younger physicians are getting this training either as part of medical school, or their post graduate training and residency. But the practicing physicians out there really need the assistance on that front. In regard to the increasingly critical problem of good physician care in nursing homes, I would like to suggest the Legislature think about creation of a special status for nursing home physicians. So we'd actually have a physician corps, much like (the) Peace Corps and so forth, that was really devoted to long-term care. Those physicians would be required to be experts at not only basic geriatric medicine but elder abuse and neglect.

Now I'd like to just quickly add a little bit to what Jamie said about data. Not only is there an urgent need to document the work that we're doing because, indeed, when you look at the [Dept. of] Justice statistics about what we're about, it looks as though we're all (be) sitting around reading the paper. I mean, it really is shocking that we know what's out there and we know what those data are, and there's just planets difference between them. In addition to having good data, it would help enormously with our problem with the medical community. Physicians are absolutely insistent today, justifiably, on having outcome data. We really need to have information that is reliable to make this all work.

Last, but not least, I'd like to point out that on the horizon we'll probably have passage of the Elder Justice Act, somewhere in the next couple of years. One of the provisions of that will be to create "Standards of Excellence." And I would really hope that new leadership will make sure California physicians have at least one of those standards of excellence. Thank you, again, for inviting me to be here today.

State Assemblyman Joe Simitian, Chair:

Thank you very much for your comments. Let me go back to the issue you mentioned about an elder abuse summit. And let me ask you and perhaps other panelists to comment as well. And as I understood your suggestion, it was that there might be value in having an elder abuse summit primarily focused on the issue of reporting, to whom, by whom and how. Did I understand you correctly?

Diana Koin:

Yes, but I think that might also be a reasonable forum for deciding what data should be collected and which agency, whether the Department of Justice, or whatever, where that data should flow.

State Assemblyman Joe Simitian, Chair:

And do you have any thoughts, if that would be something that would best happen at the local level, the regional level or the state level? I inferred statewide stakeholders, did I infer correctly?

Diana Koin:

You did.

State Assemblyman Joe Simitian, Chair:

Okay. And who is it you think ought to participate in such summit? Who do you think might most effectively convene such a summit? And if you haven't thought all these issues through, that's fine, but I want to make sure I take away as much as I can today.

Diana Koin:

Right. In terms of who should attend, those of us who work in this field are a relatively small crew. So I think that people who have established leadership in the field would certainly be participants at that kind of big round table. There was a precedent to this done years ago. There was a prior summit and I understand it was quite successful. And that would be my suggestion, we should attend on a statewide level.

State Assemblyman Joe Simitian, Chair:

Thank you. Other comments from committee members, or panel members, before we go to the public? Yes, Ms. McGinnis.

Pat McGinnis:

Just one comment, Dr. Koin and I were at a meeting recently at the attorney general's office, when they were talking about the results of their media campaign to call in their statewide number. It was interesting and it reinforced what everybody was saying. Okay, they were very happy about the number of calls they got. However, when you call in you're referred to Adult Protective Services or the Ombudsman, I believe. My questions were: "What happens next? What's the follow up? What's the outcome?" That is where it kind-of stopped. I think it's really important that we find out if any of this is effective.

We do need some kind of coordinated data system in California for reporting abuse, there's no question about it. I believe the attorney general's office would be very supportive of that, as well.

State Assemblyman Joe Simitian, Chair:

I understand your comments would also tag onto what Ms. Buckmaster said about umbrella code issues?

Pat McGinnis:

Yes.

Public Comment

State Assemblyman Joe Simitian, Chair:

Good thanks. Other comments? Then let me say thank you very much to the panel and let me ask the public to join me in thanking you in an audible way. Thank you. Thank you all. We have had two exceptionally good panels, I believe, today. I want to thank you all who have participated. We now have time set for public comment. Before we do that, just a couple of announcements. If you want to make a comment, if you would please raise your hand and one of our staff members will come and give you a card, so we can take you in order. If you have already filled out such a card, then you could raise your hand holding the card and we'll know that as well. I see somebody over in this area holding his card up. We will call you up in order.

The schedule calls for us to take a break but I am inclined to simply forge ahead. I see nodding heads. Would that make sense to people to do without a break? All right, then let's forge ahead and take public comment as well. The first card we have is from Katie Zoglin with the County Counsel's Office, to be followed by Carmencita Reyes. Would you please come up to the main microphone here. And if you give us your name for the record, we will then take your comments. If I could ask folks to line up so the next speaker is all ready to go, that would be helpful. The microphone is movable, so if you wish to adjust it or pull it to you, that would be fine. Thank you. Ms. Zoglin.

Katie Zoglin:

Thank you, and thank you for holding this. My name is Katie Zoglin. I'm the Deputy County Counsel for Santa Clara County. I represent the Public Guardian's Office here. And I wanted to add to some of the comments related to financial abuse that Cindy Hendrickson made. Law enforcement and the criminal justice side is obviously a key element. I want to emphasize how important civil tools are also. We've been very successful in working with the district attorney's office, and together I think we can reach a result that neither one of us could get individually. For example, when we represent people who have been conserved by the Public Guardian's Office, we frequently find elders whose homes are in foreclosure as a result of predatory lending or fraud. We have been very successful in keeping seniors in their homes. That's something the criminal justice system is not equipped to do. But through the civil procedures we are able to do that. I was able to stop a senior's home from being closed on who was a victim of a fraud. For many seniors, that's the most important thing, to be able to stay in their homes where they've often lived for decades and decades. In terms of legislation, we find here in Silicon Valley that predatory lending, unfortunately, is a widespread practice. The Legislature began addressing that issue by adding Financial Code Section 4970. Unfortunately, it's a very weak law. While it's a good start, it really needs to be seriously strengthened. It only covers loans that are less than \$250,000. As you know, homes here are usually worth much more than that, so it doesn't cover any of the cases that we've had.

State Assemblyman Joe Simitian, Chair:

Ms. Zoglin, let me just refresh my memory. Is this former Assemblywoman Migden's legislation? Is this the bill that we are talking about, do you recall?

Katie Zoglin:

I don't know. It was enacted in 2002.

State Assemblyman Joe Simitian, Chair:

I think that's the bill, but we'll follow up with you to make sure that we're cited to the right source. Thank you.

Katie Zoglin:

I'm happy to provide you with whatever you need. As a result, because there really is no statewide protection, a lot of localities have started looking at ordinances regarding predatory lending. The City of Oakland recently enacted one. The banking industry did challenge it, although, it was upheld. We'll hear within a week or so whether or not the Supreme Court is

going to take the case. The City of Los Angeles has also started enacting or working on a predatory lender ordinance. I think a better approach would be at the state level. We would enhance the existing legislation to cover more cases of predatory lending, rather than every city and county having to enact its own legislation. I think the bank industry would prefer to deal with one standard, as opposed to having to deal differently with every locality. I would be happy to give you examples (inaudible) to use as a model. And then other areas-to comment on previous issues. Truly intervention and training are important in the communities, in addition to the elders, and the public. The title companies industry, escrow offices and lenders, also need to be included. You might consider including them as mandatory reporters. We get so many cases in which a senior who's been conserved, who is incapable of making decisions about their financial affairs, signs a paper and has no idea what they just signed, much less the implications of the paper. I support the request to consider making banks mandatory reporters. I have also seen cases where an abuser brings an elder in, and the loan officer wanted to report it, but the supervisor told them not to because they were concerned about liability. I think that's a false concern, because there are many protections, but the banking industry sees it otherwise. And there are a few other areas, but I can provide those to you in writing, to save time and give others an opportunity to speak.

State Assemblyman Joe Simitian, Chair:

Thank you for your comments and suggestions. I understand Carmencita Reyes has decided to pass. Thank you very much. Our next speaker will be Bob Jaffee followed by Richard Park. Am I misreading the name? My apologies.

Bob Jaffe:

Assemblymember Simitian, my name is Bob Jaffee. I am a member of the California Senior Legislature, and I want to thank you for the opportunity to be able to speak about elder abuse. There are counties in California that are insidiously contributing to elder abuse by denying the elderly who do not qualify for the American with Disabilities Act, to obtain paratransit transportation. In some counties, paratransit would not transport the elderly unless they had a doctor's prescription detailing their impairment. Many elderly will be denied driving privileges due to more strict requirements by the DMV. Many elderly voluntarily give up their driving privileges because they feel uncomfortable driving at night or driving in traffic. The elderly living alone or in senior housing feel isolated because they do not live within walking distance of public transportation. A budget deficit has always been used as an excuse to deny the elderly their needs.

Elderly priorities are usually first to be cut and usually at the bottom of the priority list. The California Older Americans Act includes transportation for elderly, whether they are impaired or not. To isolate them and deprive them of paratransit transportation is an abuse, as well as physical, moral and financial abuse. There are many cities in California that do provide paratransit. I think San Mateo County is one of them. Los Angeles County is another. There

are many ways to provide it, there are many states in the country that already provide it. I think that a state mandate that would dedicate funds to counties who need to provide paratransit, would help avoid this abuse. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much for your comments. Our next speaker is Richard Park, followed by Emmie Malazgirt. Welcome Mr. Park.

Richard Park:

Thank you for having this meeting today. My name is Richard Park. I'm an administrator at Skyline Healthcare Centers in San José. I just wanted to say, while I do appreciate some of the comments by Ms. McGinnis today, I do believe some of them are opinions. I believe there is a small number of nursing homes that provide excellent care in this state, and that can be readily seen. There are some very proud healthcare providers in this state, who are very caring and loving people, who would take exception to that comment. The other thing is that as far as mandated reporting, that is something that is regulated in the nursing facilities. Ms. McGinnis mentioned that it would be good, if the nursing facilities used the video, supplied by the Department of Justice, that is mandated. Every staff member must see the video and sign his or her name as to having seen the abuse training. That is something we do through an annual survey every year. And the Department of Health Services is vigilant in making sure that it is taking place. And we do that annually and for new-hires as well. We take that very seriously, as we do in providing seniors and their families with the very best care that we can give them. We also give them the opportunity to report abuse, if they see it. And our staff reports abuse as well, without fear of retaliation.

I think that fear of retaliation has been much alleviated by the 800-number that's been provided and by the various forms of mandated reporting. It really takes away the individual option. It is mandated that our staff does report abuse. And families or anybody who sees abuse must report it as well.

One thing I'd also wanted to mention was that the Department of Justice did have a media awareness campaign. They reported on it on November 18th. They stated that they received a total of 2,483 calls to their hotline number. However, I should mention that only about 50 of those calls were referred to the Long Term Care Ombudsman. All of the others were reported to Adult Protective Services. I think, we need to put our focus where it is needed—which is often in the home and community base. We are very highly regulated in the nursing home industry. It is probably one of the most highly regulated industries in the country. So to have more regulation, I think, it would be somewhat overkill. There's an opportunity in the community to be focused on. And I would just implore you to take a look at that. So that's what I have to say. Do you have any questions?

State Assemblyman Joe Simitian, Chair:

No, but thank you for your comments. That brings us to Emmie Malazgirt. I hope I'm in the ball park with the pronunciation. She is to be followed by Denis O'Neal.

Emmie Malazgirt:

Thank you very much. Yes, it's Emmie Malazgirt. What wonderful pronunciation. Thanks for the opportunity of being here. I am the owner of Nursing Resources. It's a licensed home health agency that provides home health services to elderly people in their homes, as well as in residential care facilities. Now the issue that I wanted to bring to your attention is the difficulty of fingerprinting. Department of Social Services and Department of Health Services are two separate entities. As a home health agency, licensed by the Department of Health Services, we fingerprint our certified nurse assistants, home health aides, and personal care attendants. When we send our employees to residential care facilities to care for our clients at these facilities, which are licensed by the Department of Social Services, they do not recognize the fingerprint clearance of the people from the Department of Health Services. That means that they need to go through this process all over again. I might add that this is a highly expensive procedure—we're talking about \$100 per processing. So it puts a lot of pressure, financial burden on companies—small companies like us, to do this over and over for each kind of audience. That's what I wanted to bring to your attention. If there is some way of standardizing the fingerprinting process, so that once a person is cleared by one entity, it's available and valid for everybody else.

State Assemblyman Joe Simitian, Chair:

Thank you very much. Our next speaker is Denis O'Neal and I believe that's the last card I have.

Dennis O'Neal:

Thank you, Assemblyman and committee, for being here today and conducting this hearing. I am also a Deputy County Counsel member of the Santa Clara County FAST team. I also advise the Public Guardian on civil aspects of elder abuse. I wish to also thank all of the previous speakers, with whom I concur.

Early intervention is the key to saving the homes of elders and in many cases saving lives. Early intervention has already begun with our FAST team, through mandatory reporting. Having the institutions that are most likely to see financial abuse, report it, would further this. Those in position to see it, would be in the best position to prevent it—title companies, realtors and banks. Right now, we require physicians to report financial abuse, but we do not require banks, realtors or title companies to do so. That doesn't make sense.

In terms of law enforcement, actually, my observations have been that law enforcement, particularly in Santa Clara County, has done a tremendous job, an excellent job. And it is the efforts by our FAST Team, the District Attorney, Mr. Kennedy, that has done that.

Unfortunately, law enforcement cannot always obtain restitution in these cases. Oftentimes, the criminal conduct, someone who steals the assets, consumes the assets with drugs or alcohol, what have you, and the assets are gone. The civil prosecution is left with trying to save the house of the elder. In those cases, we're usually not going after the direct perpetrator or the elder abuse. The Elder Abuse Act, as you know, provides that elder financial abusers are anyone who takes, or assists in taking from an elder. On the civil side, we're usually going after someone who has obtained or assisted the financial elder abuse. When you go after these individuals, the same problems exist today that have in the past, we're often going after a title company, or we're going after a realtor, or somebody who has assisted in the abuse. The only way to protect the house for the elder is to prosecute these people civilly.

The problem of proof, essentially the Elder Abuse Act of 15630.10—I may be wrong, I'm not good on numbers—requires that to get attorney fees or enhanced damages, you must prove by clear and convincing evidence that the person who obtained the assets, or assisted in obtaining them, acted in bad faith. And you must prove by clear and convincing evidence that they acted recklessly, with fraud or malice. Often that burden of proof is much too high, particularly when it applies to someone who had assisted or retained after the fact. If that burden could be lowered to a normal burden of preponderance of evidence, the additional benefit would be, not only could be, prosecute civilly to assist the elder, but private attorneys would step up to the plate and handle some of these cases.

It was anticipated, when the Elder Abuse Act passed, that private civil attorneys would also step up and take on some of these cases. In fact, my experiences in the county are that very few private attorneys take these cases. They can't make money on them. We've attempted to get them to take them, but for the most part, deputy county counsels throughout the state are handling these cases. Ironically, there is more of a financial incentive for private attorneys to specialize in representing the abusers, and not representing the victims.

Another comment, Probate Code I think it's 359 [259], provides that a person who is convicted of elder abuse, either civil or criminally, cannot inherit. Unfortunately, the way that statute is written, it seems to read that they cannot inherit the asset that was returned because of successful prosecution. The statute could be, and should be, changed to state that anyone convicted of elder abuse can't inherit period. This gets into arguments about what is the asset that was secured.

State Assemblyman Joe Simitian, Chair:

Excuse me. Inherit. Even if there's a written will that designates them as the beneficiary?

Dennis O'Neal:

Correct. The current statute, Probate Code 359 [259], provides that even if there is a will or a trust, a person convicted of elder abuse cannot inherit the asset that was obtained back into the estate because of the elder abuse prosecution. To disinherit entirely would be appropriate in most circumstances.

My last comment goes to privacy and confidentiality. The current problems of privacy and confidentiality will be compounded by HIPAA. Medical declarations are required. Medical testimony is required. In many of these cases, as has been reported by the panelists, elders do not come forward and report that something happened to them. We need to prove the elder is incompetent to go forward on a conservatorship. In order to get assets back, we're usually trying to provide that at the time of the transfer, the power of attorney, the joint tenancy, what have you, that the elder either lacked capacity or was susceptible to undue influence. Once again that requires medical declarations. Under both the HIPAA law, but also under current privacy and confidentiality laws, it's often very difficult to get a doctor to come to testify. We need legislation that says at the request of Adult Protective Services, Public Guardian agency, or a court investigator, that a doctor can provide a medical declaration and protect it with whatever confidentiality for the purpose of investigating or preventing elder abuse, that would be appropriate. But as it is now, much time is spent simply trying to get a medical foundation declaration from a doctor as to whether or not the elder needs help or not.

I said last, but actually there's one more. And that is, there are many elders who are competent who are taken advantage of. There are simply no current government or private agencies to assist those people. I know SALA tries to assist, particularly, in physical abuse areas, but when you have a competent elder we're often struggling with well why don't we see if they can voluntarily agree to a conservatorship so that deputy county counsel can assist them in getting their house back. Otherwise, we have no real standing to do anything about it. That's unfortunate. They shouldn't be subjected to conservatorship before they get help on their problems. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much, very helpful comments. We do in fact have two more cards. Anne Mack to be followed by Jack Christy. I believe those will be our last. All right, we're going to give you the last word Ms. Mack, we'll let Jack Christy step forward.

Jack Christy:

Thank you, Assemblymember. I appreciate the opportunity to speak today. I hadn't intended to speak, but I just wanted to push back a little on the comments made by the previous speaker, when it comes to lowering the standards of evidence in an abuse case. I work for the California Association of Homes and Services for the Aging. We represent not-for-profit providers of assisted living, low-income housing, and skilled nursing. We're finding that the

abuse statute is presenting an opportunity for aggressive, plaintiff's attorneys to try to work out a settlement and get attorneys fees. Lowering the standard of evidence within an abuse case would just raise liability insurance prices to our members.

Our members, if you've read Pat's report, are the good guy members, the white hat members, the community based folks that don't have a lot of lawsuits. But nonetheless, we still get tagged with the cost of insurance, and the reason why we don't have lawsuits, mainly, is because most of our members are religious or fraternal-based organizations that have endowments, that they have been eating into to supplement the cost of care. So I just wanted to push back on that point. I wanted to separate out financial elder abuse and put a lower standard of evidence in for that. I guess we'd have no qualms, because that's not where the problems are arising for us. It's arising on the physical side. When you're in a nursing home situation you're with people who are in the last days of their lives. If you reach over to the telephone and you cut your skin, is that abuse or is that because your skin is just so fragile at that point in your life, that it cuts easily. Making those kinds of differentiations on a normal standard of negligence as opposed to the higher one on elder abuse statute, it's a necessary protection to have.

State Assemblyman Joe Simitian, Chair:

Thank you for your comments. Anne Mack with the last word.

Anne Mack:

My name is Anne Mack. I am the chair of the Advisory Council for the Council on Aging. I am also a Senior Legislator with Bob Jaffee. On behalf of the seniors in Santa Clara County and the State of California, I want to thank you for the work that you've done in holding this hearing. Most of the people that have talked have represented most of the views that we have on the Council, and the Senior Care Commission and Senior Legislature. All I wanted to say was ,thank you very much for presenting this. I'm hoping that the Legislature will take your thoughts, considerations ,and your views and put some good legislation together for us, for the seniors of California. Thank you.

State Assemblyman Joe Simitian, Chair:

Thank you very much for your time and comments. If I'd known that was what you were going to say, I would've let you speak first, middle and last as well, Ms. Mack. Thank you. A couple of comments before we wrap it up. Thank you again to all the participants, our panelists and members of the public who spoke. Let me tell you where we go from here. As I mentioned earlier, there are a couple of other hearings, we have one coming up on December the 10th, from 1:00 p.m. to 4:00 p.m. in Santa Cruz in the Santa Cruz City Council chambers. We also have a slightly less formal, but wide-ranging discussion that's been scheduled for Monday, December 15th in the Redwood City Hall building from 9:00 a.m. to 10:30 a.m. Not

just elder abuse issues, but issues important to older Californians. But the goal, as I've indicated at the outset, is to use this process to identify real solutions to real problems.

I want to particularly commend and thank the panelists and the members of the public who spoke today. Too often we hold hearings like this, and all we do is we look at the problems. There were a number of very tangible and very specific suggestions today in areas where legislative attention might be helpful. And in many instances, it does not involve expenditure of funds.

Without attempting to be exhaustive, at all, but to let you know, I was listening and that's why we have a tape, and that's why we have staff members from Sacramento who I want to introduce as well. We got a very specific question about whether or not we can save some dollars, and you were very helpful in this process, and we'll follow up on that. We also had comments about penalties, about data, about eviction law, about mandatory reporting, about inheritance issues, about privacy challenges, about burden of proof. Those are just some of the ones that were identified today, but I think will give us a lot to work with. I'm sure we will have more as we move forward.

The Select Committee process is one in which there is no formal consideration of legislative proposals. That happens in our various policy committees. But the best example I can give you is I also chair the Assembly Select Committee on Privacy. Using that vehicle, we ended up generating areas for legislation, a piece of legislation that was subsequently introduced, that was subsequently passed into law, and is today law in the State of California. So my hope and expectation is by your participation in this discussion today, that in the not too distant future you will be able to say, my participation made a difference. There are today laws on the books that might not have otherwise been passed and put into law were it not for your participation. I think that's it.

I do want to introduce and thank a couple more people before we call it a day. If I could ask both Dena Wilson and Lark Park from our Sacramento office to stand, so we can recognize them for making their way down from Sacramento. Dena and Lark, our staff to the select committee on elder abuse. They will be working closely with me and my colleagues in the coming year to try to take this information and put it into legislative proposals. You may want to take a moment after we wrap-up to introduce yourselves to them. Share a business card, if you have it. They've been taking copious notes, as well, during this discussion. Between their note taking, my note taking and the tape itself, which we will review of course, we'll be able to make sure nothing is missing from this. Thanks again to members who couldn't be here, Assemblywoman Lieber who has sent staff. And Assemblymember Manny Diaz who sent staff, and Senator Byron Sher. I know I saw staff as well from County Supervisor Don Gage's office and County Supervisor Liz Kniss' office. With that, I think I want to say thank you one more time. Please drive home safely, and thank you so much for your participation.

END OF HEARING